Toh Shu Hua & Ors v Wawasan Rajawali Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCVC-296–05 OF 2019
AKHTAR TAHIR J
6 JANUARY 2023

Contract — Agreement — Misrepresentation — Plaintiffs purchased properties based on sale methods employed by first defendant — Whether defendants perpetuated misrepresentation on purchases of apartment — Whether plaintiffs entitled to monetary compensation

Contract — Housing development — Defects in apartments and common areas — Whether defects ought to be rectified by defendants

Contract — Sale and purchase of property — Late delivery of vacant possession — Extension of completion was given on behalf of Controller of Housing — Whether plaintiffs' claim for late delivery of vacant possession ought to be allowed

Damages — Aggravated damages — Claim for — Plaintiffs claimed damages were ongoing and no steps had been taken by defendants to rectify all wrongdoings nor had defendant showed any remorse — Whether plaintiffs entitled to aggravated damages

Tort — Vicarious liability — Second defendant parent company of first defendant — Plaintiffs claimed second defendant vicariously liable for breach of contract of first defendant — Whether there was cause of action by plaintiffs against second defendant

This was a claim brought by 122 plaintiffs as a representative action against the defendants for purchases of apartments in a project ('the project') which was developed by the first defendant with the second defendant being the parent company of the first defendant. The grievances of the plaintiffs as the purchasers of the project against the defendants were: (a) late delivery of vacant possession of the apartments purchased; (b) loss suffered as a result of misrepresentation by the defendants as to the nature of the project; and (c) damages suffered as a result of prevalent defects both in the apartments purchased as well as common areas. The plaintiff further claimed that the second defendant was vicariously liable for the breach of contract of the first

defendant. The plaintiffs also claimed as the damages were ongoing and no steps had been taken by the defendants to rectify all the wrongdoings nor had the defendant showed any remorse, they were entitled to aggravated damages.

Held, allowing the plaintiffs' claim against the first defendant with cost of RM200,000 and dismissing the plaintiffs' claim against the second defendant with cost of RM30,000:

(1) The sale and purchase agreement must comply with the statute and must be read within the ambit of the statute where it was stated that the period of completion of a residential property was 36 months. The letter of extension of completion to a period of 48 months was given by a letter on behalf of the Controller of Housing. The Controller of Housing had no authority to give extensions and therefore the letter had no legal effect. The defendants' contention that the plaintiffs were aware of the extension was of no avail as what was unlawful remained unlawful, even if the parties acquiesce to it. The period of delivery of vacant possession exceeded the 36 months allowed by the law and therefore the plaintiffs' claim for late delivery of vacant possession was allowed (see paras 8–9 & 11).

(2) It could be inferred that each of the plaintiff was induced to buy the property based on any of the sale methods employed by the defendant. The brochures published to market the sale of the apartment were not merely an invitation to treat but were worded in the form of promises. This promise of 'your world in one place' which was a phrase used in the brochures was not achieved and is not likely to be achieved in the near future. What was pictured in the brochures was not even remotely visible at present. It was a duty upon the defendant to give a near-accurate description of the project which they had failed to do so with the non-completion of many of the amenities promised. Therefore, the defendants did perpetuate misrepresentation on the purchases of the apartment in this project which included the plaintiffs. The plaintiffs were influenced to buy the apartments in this project, by the way the project was marketed by the first defendant. The real loss for the plaintiffs was the enjoyment of the use of the apartments in a manner promised to them. It was difficult to quantify this loss of enjoyment but some monetary compensation should be awarded. This monetary compensation should be reasonable and should not burden the defendant, as the claimants were many. Therefore, the plaintiffs were entitled to RM50,000 each for the loss of enjoyment on the promise of the first defendant (see paras 15, 18–19, 21–22 & 28–30).

(3) Not all defects needed to be rectified by the defendants as some of the defects were minor and no benefit would be gained in rectifying the defects. Also, the first defendant was responsible for rectifying the defects

as the first defendant had been notified of the defects within the defects liability period. The plaintiffs' claim for the defects to be rectified by the defendants was allowed (see paras 32 & 38).

(4) The defendants had taken a defiant and combative attitude in matters that could have been resolved much earlier and with the consultation of the residents. There was also no indication or evidence from the defendant showing that they would carry out all the promises as stated in the brochure. Therefore, the plaintiffs were entitled to aggravated damages to the amount of RM2m to be shared amongst the plaintiffs (see paras 39–40).

(5) Apart from evidence that the second defendant was the parent company of the first defendant there was no evidence of the second defendant's involvement of the project which was fully carried out by the first defendant. There was no evidence proving that the second defendant was the controlling mind of the first defendant and therefore this was not a proper case to lift the veil of corporation. As both the defendants were separate entities there was no cause of action by the plaintiffs against the second defendant (see paras 41–42).

[Bahasa Malaysia summary

Ini adalah tuntutan yang dibawa oleh 122 plaintif sebagai tindakan wakil terhadap defendan untuk pembelian pangsapuri dalam projek ('projek') yang dibangunkan oleh defendan pertama dengan defendan kedua sebagai syarikat induk defendan pertama. Rungutan plaintif sebagai pembeli projek terhadap defendan adalah: (a) kelewatan penyerahan milikan kosong pangsapuri yang dibeli; (b) kerugian yang dialami akibat salah nyata oleh defendan tentang sifat projek; dan (c) kerugian yang dialami akibat daripada kebanyakan kecacatan yang berlaku di dalam pangsapuri yang dibeli mahupun di kawasan umum. Plaintif seterusnya mendakwa bahawa defendan kedua bertanggungjawab secara vikarius bagi pelanggaran kontrak defendan pertama. Plaintif juga menuntut oleh kerana ganti rugi berterusan dan tiada langkah telah diambil oleh defendan untuk membetulkan semua salah laku dan defendan tidak menunjukkan sebarang penyesalan, mereka berhak mendapat ganti rugi teruk.

Diputuskan, membenarkan tuntutan plaintif terhadap defendan pertama dengan kos RM200,000 dan menolak tuntutan plaintif terhadap defendan kedua dengan kos RM30,000:

(1) Perjanjian jual beli mesti mematuhi statut dan mesti dibaca dalam lingkungan statut di mana ia telah dinyatakan bahawa tempoh penyiapan hartanah kediaman ialah 36 bulan. Surat lanjutan penyiapan kepada tempoh 48 bulan diberikan melalui surat bagi pihak Pengawal Perumahan. Pengawal Perumahan tidak mempunyai kuasa untuk memberikan lanjutan dan oleh itu surat itu tidak mempunyai kesan

undang-undang. Pendapat defendan bahawa plaintif menyedari lanjutan itu tidak disokong kerana perkara yang menyalahi undang-undang tetap menyalahi undang-undang, walaupun pihak-pihak bersetuju dengannya. Tempoh penyerahan milikan kosong melebihi 36 bulan yang dibenarkan oleh undang-undang dan oleh itu tuntutan plaintif untuk kelewatan penyerahan milikan kosong dibenarkan (lihat perenggan 8–9 & 11).

(2) Boleh disimpulkan bahawa setiap plaintif telah didorong untuk membeli hartanah itu berdasarkan mana-mana kaedah penjualan yang digunakan oleh defendan. Risalah-risalah yang diterbitkan untuk memasarkan penjualan pangsapuri itu bukan sekadar pelawaan tawaran tetapi dilafazkan dalam bentuk janji. Janji 'your world in one place' yang merupakan frasa yang digunakan dalam risalah tidak tercapai dan tidak mungkin dicapai dalam masa terdekat. Apa yang digambarkan dalam risalah itu tidak kelihatan pada masa ini. Adalah menjadi kewajipan ke atas defendan untuk memberikan penerangan yang hampir tepat mengenai projek yang mereka gagal melakukannya dengan tidak menyiapkan banyak kemudahan yang dijanjikan. Oleh itu, defendan-defendan telah berterusan salah nyata mengenai pembelian pangsapuri dalam projek ini yang termasuk plaintif. Plaintif telah dipengaruhi untuk membeli pangsapuri dalam projek ini, dengan cara projek itu dipasarkan oleh defendan pertama. Kerugian sebenar bagi plaintif ialah memperoleh penggunaan pangsapuri mengikut cara yang dijanjikan kepada mereka. Sukar untuk mengukur kehilangan perolehan ini tetapi beberapa pampasan kewangan harus diberikan. Pampasan kewangan ini sepatutnya munasabah dan tidak membebankan defendan, kerana penuntut adalah ramai. Oleh itu, plaintif berhak menerima RM50,000 setiap seorang untuk kehilangan perolehan atas janji defendan pertama (lihat perenggan 15, 18–19, 21–22 & 28–30).

(3) Tidak semua kecacatan perlu diperbetulkan oleh defendan kerana beberapa kecacatan adalah kecil dan tiada faedah akan diperoleh dalam membetulkan kecacatan itu. Selain itu, defendan pertama bertanggungjawab untuk membetulkan kecacatan kerana defendan pertama telah dimaklumkan tentang kecacatan dalam tempoh liabiliti kecacatan. Tuntutan plaintif untuk kecacatan yang perlu diperbetulkan oleh defendan dibenarkan (lihat perenggan 32 & 38).

(4) Defendan telah mengambil sikap menentang dan agresif dalam perkara yang boleh diselesaikan lebih awal dan dengan perundingan penduduk. Juga tiada petunjuk atau keterangan daripada defendan yang menunjukkan bahawa mereka akan melaksanakan semua janji seperti yang dinyatakan dalam risalah. Oleh itu, plaintif berhak mendapat ganti rugi teruk kepada jumlah RM2 juta untuk dikongsi bersama antara plaintif (lihat perenggan 39–40).

(5) Selain daripada keterangan bahawa defendan kedua adalah syarikat induk defendan pertama, tiada bukti penglibatan defendan kedua dalam projek itu yang telah dijalankan sepenuhnya oleh defendan pertama. Tiada bukti yang membuktikan bahawa defendan kedua adalah minda mengawal defendan pertama dan oleh itu ini bukanlah kes yang wajar untuk mengangkat tirai pemerbadanan. Oleh kerana kedua-dua defendan adalah entiti yang berasingan, tiada kausa tindakan oleh plaintif terhadap defendan kedua (lihat perenggan 41–42).]

Cases referred to

Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals [2020] 1 MLJ 281; [2020] 1 CLJ 162, FC (refd)

Legislation referred to

Contracts Act 1950 ss 18, 19

V Rajadevan (Uma Gunasellan with him) (Rajadeevan & Assoc) for the plaintiff.
Ho Ai Ting (Aaron Mah, Andrew Chiew Ean Vooi and Sahira Sha'ari with her) (Lee Hishamuddin Allen & Gledhill) for the first defendant.
Lim Lay Yee (Kelvin Seet Wan Nam with her) (Chooi & Co + Cheang & Ariff) for the second defendant.

Akhtar Tahir J:

INTRODUCTION

[1] This is a claim brought by 122 plaintiff's as a representative action against the defendants for purchases of apartment in a project known as Eclipse Residence ('the project') which was developed by the first defendant with the second defendant being the parent company of the first defendant.

[2] This matter went for a full trial whereby both parties relied on oral testimony of witnesses, documentary evidence which were contained in the joint bundle of documents as well as a report prepared in pursuance of a site visit directed by the court.

SUMMARY OF THE EVIDENCE ADDUCED

[3] While there was no dispute that the plaintiffs were the purchasers of the project developed by the first defendant there were a number of grievances by the plaintiffs against the defendants which can be summarised from the totality of the evidence adduced.

[4] The grievances of the plaintiffs against the defendants could be categorised as follows:

(a) late delivery of vacant possession of the apartments purchased;

(b) loss suffered as a result of misrepresentation by the defendants as to the nature of the project; and

(c) damages suffered as a result of prevalent defects both in the apartments purchased as well as common areas;

[5] The plaintiff further claimed that the second defendant was vicariously liable for the breach of contract of the first defendant. Finally the plaintiffs also claimed as the damages are ongoing and no steps have been taken by the defendants to rectify all the wrongdoings nor has the defendant showed any remorse, entitled them to aggravated damages

THE ISSUES

[6] The court viewed that the issues to be decided this case to follow the determination of the grievances of the plaintiff as categorised above.

Damages for late delivery

[7] The court agrees with the submission of the plaintiff that this issue has been with finality decided by the apex court in the case of *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals* [2020] 1 MLJ 281; [2020] 1 CLJ 162 where it was stated as follows:

> [38] In the case of *Sentul Raya Sdn Bhd v Hariram Jayaram & Ors and other appeals* [2008] 4 MLJ 852; [2008] 4 CLJ 618, Gopal Sri Ram JCA (as he then was) speaking for the Court of Appeal said:
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> > The contract which has fallen for consideration in the present case is a special contract. It is prescribed and regulated by statute. While parties in normal cases of contract have freedom to make provisions between themselves, a housing developer does not enjoy such freedom. Hence parties to a contract in Form H cannot contract out of the scheduled form. Terms more onerous to a purchaser may not be imposed. So too, terms imposing additional obligations on the part of a purchaser may not be included in the statutory form of contract.
>
> [39] The Federal Court in *Veronica Lee Ha Ling & Ors v Maxisegar Sdn Bhd* [2011] 2 MLJ 141; [2009] 6 CLJ 232, reiterated the object of the Act by making the following observation:
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> > Now, cl 23 is part of a statute based contract. In this country, the relationship between a house-buyer and a licensed developer is governed by the Housing Developers legislation. Its object is to protect house buyers against developers. A

developer must execute the agreement set out in the schedule to the relevant subsidiary legislation. He cannot add other clauses in it.

[40] The Act being a social legislation designed to protect the house buyers, the interests of the purchasers shall be the paramount consideration against the developer. Parliament has entrusted the Minister to safeguard the interests of the purchasers and the Minister has prescribed the terms and conditions of the contract of sale as per Schedule H. We find no contrary indication in the language, scope or object of the Act that such duty to safeguard the interests of the purchasers may be delegated to some other authority.

[41] The legislative intent that the duties shall remain with the Minister, may be discerned from ss 11 and 12 of the Act. Under s 11, whilst the Controller is given the power to investigate on the reason why a licensed housing developer is unable to meet his obligation to the purchasers, or is about to suspend his building operations or is carrying on his business detrimental to the interests of the purchaser, it is the Minister who is empowered to give directions and to take such other measures for purposes of safeguarding the interests of the purchasers and for carrying into effect the provisions of the Act. Likewise under s 12 which provides for the powers of the Minister to give general directions as he considers fit, to the licensed housing developer for purposes of ensuring compliance with the Act. Such directions, which shall be given in writing, are binding on the developer.

[8] It is clear from the above case that the sale and purchase agreement must comply with the statute and must be read within the ambit of the statute where it is stated that the period of completion of a residential property is 36 months. In this case the letter of extension of completion to a period of 48 months was given by a letter dated 16 December 2013 on behalf of the Controller of Housing. The Controller of Housing has no authority to give extension as decided by the case above and therefore the letter has no legal effect.

[9] The court also rules that the defendant's contention that the plaintiffs were aware of the extension is of no avail as what is unlawful remains unlawful, even if the parties acquiesce to it. The Contracts Act 1950 is clear where it is stated for a valid contract to exist, neither the consideration nor the object can be unlawful.

[10] The defendant's contention that the plaintiff's should challenge the extension given by the authorities by way of judicial review is without basis as the plaintiffs can choose to exercise their rights to challenge the agreement with the defendant by way of a civil suit instead of challenging the decision of the Minister which is void ab inito in the first place.

[11] In this case the court is satisfied that the period of delivery of vacant possession exceeded the 36 months allowed by the law and therefore allowed the plaintiffs' claim for late delivery of vacant possession according to the

amount claimed in the amended statement of claim in accordance with the late delivery for each plaintiff.

MISREPRESENTATION

[12] Misrepresentation under contracts law is as stated in s 18 of the Contracts Act 1950 which states as follows:

> 'Misrepresentation' includes —
>
> (a) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
>
> (b) any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; and
>
> (c) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

[13] For 'misrepresentation' under the law as stated above to operate there must be inter alia a positive assertion in a manner not warranted, breach of duty with intent to give advantage thereby inducing a party to the agreement to make a mistake as to the substance of the agreement.

[14] In this case the positive assertions were contained in the brochures published to market the sale of the apartment to which the public had assess to including to the plaintiffs. The positive assertion of the project were also made by the sales pitch of the sales person. The publication of the brochures for sale of apartment as well as the sales pitch of the sale executives and construction of sales galley are common features in the sale of properties in Malaysia which this court can take judicial notice of.

[15] In the light of this it is unnecessary for each of the plaintiffs to testify in what manner they were individually convinced to purchase the apartments. Even without the oral testimony of each plaintiff it can be inferred that each of the plaintiff was induced to buy the property based on any of the sale methods employed by the defendant.

[16] What reverberated in the sale of the apartment in this project is the promise of a complete township offered by the developer for the purchasers buying apartment in the project. In other words the project promised a person purchasing a property to enjoy work, play, recreate in in one area. Nowhere is this promise more clearly portrayed than the phrase used in the brochures which reads loud and clear 'Your world in one place'.

[17] Amongst this promise of the world in one place was 'a rustle of leaves and wide wooden walkways along side modern glass and steel' and even more attractive is the residence is 'Esclipse Residence at Pan'gaea is part of a self-sustained integrated development in the heart of Cyberjaya. A true urban gem, the freehold property offers semi-furnished service apartments ranging from 458–990 sqft, A diverse 'habitat' in which to work, play and thrive, your neighbours includes the Paragon's solo suites and boutique retail shops, Sostice service apartments, the apatio, a lively street shopping quarter and the gallery Mall with over 300,000 sqft of net lettable space. Make your home in one of Pangea's crown jewels and enjoy the pinnacle of urban living'.

[18] The brochure was accompanied by other details including the size of the apartments, the overall impression of the entire project and many other features. The court rules that the brochures were not merely an invitation to treat as contended by the defendants but were worded in the form of promises.

[19] It is clear from the evidence adduced that this promises of 'your world in one place' was not achieved and not likely to be achieved in the near future, the glaring omission being the shopping mall and other amenities and overall lack of vibrancy promised. It is clear that what was pictured in the brochures was not even remotely visible at present.

[20] The court cannot accept the arguments of the defendants that the brochure had an exclusion clause which safeguarded the defendant from any discrepancy in the description of the project. For one the exclusion clause was in a fine minute wordings at the bottom of the page. Further in marketing the project there must be a grain of truth in the promise made even if not fully accurate and even if there is an exclusion clause.

[21] In this case the court noted that the project was not even a semblance of the lifestyle promised and pictured in the marketing of the project. It is a duty upon the defendant to give a near accurate description of the project which in this case they have failed to do so in this case with the non-completion of many of the amenities promised.

[22] The court therefore rules that the defendants did perpetuate misrepresentation on the purchases of the apartment in this project which includes the plaintiffs in this case. The court also rules that the plaintiffs were influenced to buy the apartments in this project, by the way the project was marketed by the first defendant.

[23] The effect of an agreement entered under misrepresentation is as stated under s 19 of the Contracts Act 1950 which provides as follows:

A (a) When consent to an agreement is caused by coercion, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

(b) A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception — If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation — A fraud or misrepresentation which did not cause the consent to a contract of the party on whom the fraud was practised, or to whom the misrepresentation was made, does not render a contract voidable.

D ILLUSTRATIONS

(a) A, intending to deceive B, falsely represents that five hundred gantangs of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

E (b) A, by a misrepresentation, leads B erroneously to believe that five hundred gantangs of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred gantangs of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

F (c) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an undervalue. The contract is voidable at the option of A.

(d) A is entitled to succeed to an estate at the death of B; B dies; C, having G received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

[24] From the above provision it is clear that the party suffering the breach H by way of misrepresentation may rescind the contract or insist the contract be performed and the plaintiffs be put in a position if what the representation made were true. This provision negates the defendants contention that where misrepresentation is proved, the plaintiffs can only rescind the contract but cannot claim for damages

I

[25] In this case the plaintiffs are not seeking to rescind the contract but asking the contract to be performed and that they be put in a position to benefit if the representation were true. The plaintiffs in this claim seeks to be compensated for the loss of the value of the property which would have

otherwise been valued in the event the representation were true. A

[26] For this purpose the plaintiffs had adduced the evidence of a valuer who has prepared a report of the value of the property in the event all the amenities were provided by the defendants as promised against the present value in its present state. B

[27] In the court's view this is not a proper remedy as this loss of value of the property will only be suffered if the plaintiffs had intention to sell their apartments which none of the plaintiffs have indicated in this case. In the converse the plaintiffs are asking for the defects to be rectified. This indicates that the plaintiffs are intending to stay at the apartments. C

[28] The real loss for the plaintiffs is the loss of enjoyment of the use of the apartments in a manner promised to them. The enjoyment of working, playing recreating all in one place cannot be enjoyed at the moment and even into the future. D

[29] It is difficult to quantify this loss of enjoyment but the court is of the view that some monetary compensation should be awarded. The court is also of the view that this monetary compensation should be reasonable and should not burden the defendant, as in this case the claimants are many. E

[30] The court determined therefore the plaintiffs are entitled to RM50,000 each for the loss of enjoyment on the promise of the first defendant. F

RECTIFICATION OF THE DEFECTS

[31] During the proceedings the court directed both the parties to carry out a joint inspection of the project to determine the actual defects which exists and to prepare a concise report on the defects as well as identify the places the defects are found. G

[32] The report on the joint inspection detected defects both in the various apartments as well as in the common areas. The court ruled that not all defects need to be rectified by the defendants as some of the defects were minor and no benefit would be gained in rectifying the defects. The court also decided that the first defendant is responsible for rectifying the defects as the first defendant had been notified of the defects within the defects liability period. H I

[33] Amongst the defects the court allowed found in the apartments and this includes all the apartments are for the defendants to provide a safety harness and a platform for air condition maintenance services. At the moment there

A was no safety ledge for a person doing the maintenance from outside the apartment.

B **[34]** A number of apartments were also found to be leaking at certain areas and although the source of the leak could not be properly identified the court viewed it the responsibility of the defendants to identify the source and rectify it.

C **[35]** There were also a number of apartments where the electrical plugs were at a place that could be hazardous due to presence of water outlets and therefore such electrical plus needed to be moved.

D **[36]** The court was also satisfied that a number of apartments which had tiles both on the floor and the wall which were hollows for lack of proper workmanship. The defendants needed to rectify this.

E **[37]** For the common area the serious defects were wide cracks which could have only be caused by poor workmanship and material which is the responsibility of the defendants to rectify. There were also public areas in the common area which had the retaining walls lower than the authorised specification and this need to be rectified by the defendants.

F **[38]** In short for the defects the court allowed the plaintiffs' claim for the defects to be rectified by the defendants.

AGGRAVATED DAMAGES

G **[39]** In this case the court noted that the defendants had taken a defiant and combative attitude in matters that could have been resolved much earlier and with the consultation of the residents. There is also no indication or evidence from the defendant showing that they will carry out all the promises as stated in the brochure especially the 'world in one place'.

H **[40]** The court therefore decided that the plaintiffs are entitled to aggravated damages to the amount of RM2m to be shared amongst the plaintiffs.

VICARIOUS LIABILITY

I **[41]** On the issue of vicarious liability the court decided that apart from evidence that the second defendant was the parent company of the first defendant company there is no evidence of the second defendant's involvement of the project which was fully carried out by the first defendant. The court could not detect any evidence proving that the second defendant was the

controlling mind of the first defendant and therefore this was not a proper case to lift the veil of corporation.

[42] As both the defendants are separate entities the court ruled that there was no cause of action by the plaintiffs against the second defendant.

CONCLUSION

[43] Based on the factors above the court allowed the plaintiffs' claim against the first defendant with a cost of RM200,000 and dismissed the plaintiffs' claim against the second defendant with a cost of RM30,000.

Plaintiff's application allowed with no order as to cost.

Reported by Ahmad Ismail